

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

ANGELA SWORD LEWIS
THOMAS K. LEWIS

Chapter 7
Case No. 11-44385-SWD
Hon. Walter Shapero

Debtors.

CHAPTER 7 TRUSTEE'S OBJECTION TO DEBTORS' AMENDED CLAIM OF EXEMPTIONS

NOW COMES Chapter 7 Trustee, Timothy J. Miller, by and through its attorneys, OSIPOV BIGELMAN, P.C., and states as follows:

Jurisdictional Basis

Objection to Debtor's Amended Claim of Exemption

1. This is a contested matter brought pursuant to B.R. 4003(b), 11 USC 542 and B.R. 9014.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), over which this Court has jurisdiction pursuant to 28 U.S.C. § 157(b)(1) and 28 U.S.C. § 1334.

General Allegations

3. Timothy J. Miller is the duly appointed and acting Trustee in this case.
4. Debtors filed for Chapter 7 Bankruptcy protection on February 22, 2011.
5. The Debtors bankruptcy schedules contained numerous omissions, including, but not limited to:

- A. Schedule B- Paragraph 18- The Debtors failed to schedule State and Federal Income Tax Refunds totaling \$9,978.00;
- B. Schedule B- Upon information and belief, the Debtors failed to schedule all of their personal property, scheduling only \$4,301.00 of assets, when their retirement accounts and their vehicle are excluded, while attempting to discharge \$366,247.84 of unsecured debt;

C. Schedule F- The Debtors failed to schedule a debt owing to Jim and Blanche Sword, who are the parents of Angela Sword Lewis, and insiders as defined by Section 101 of the Bankruptcy Code.

6. On March 30, 2011, the Debtors attended their First Meeting of Creditors.

7. At the First Meeting of Creditors, only after questioning by the Trustee did the Debtors finally disclose that they had received an income tax refund of approximately \$10,000.00 and that they had a cashier's check issued to their parents to repay the previously undisclosed and unscheduled debt to them.

8. On April 1, 2011, the Trustee filed a Report of Undisclosed Assets.

9. Upon information and belief, the Debtors transferred the proceeds from the income tax refund to Jim and Blanche Sword.

10. On April 28, 2011, the Trustee requested the Debtors turnover the following documents:

A. 2010 Income Taxes for both Debtors;

B. Any and all documentation evidencing the disposition of Angela's 2010 Income Tax Refund.

The Debtors ignored this request in violation of their duties under Section 521 of the Bankruptcy Code.

11. On May 3, 2011, the Debtors' filed amended schedules claiming an exemption in the previously undisclosed income tax refund, and for the first time listing Jim and Blanche Sword as creditors.

12. The Debtors' claim of exemption is improper as it was not scheduled, despite the fact that they had received income tax refunds in past years.

13. Upon information and belief, their income tax returns were filed prior to the filing of their bankruptcy petition.

14. When the Debtors took the proceeds from their income tax refund, and transferred the proceeds to Jim and Blanche Sword, it lost its character as an income tax refund.

15. But for the questioning of the Trustee at the First Meeting of Creditors, the Trustee would have had no knowledge of the asset of the estate, or the subsequent post petition transfer.

16. On May 31, 2011, Trustee sought concurrence for the relief requested pursuant to LBR 9014-1(g), but concurrence was not granted.

Brief in Support

The Trustee relies upon 11 U.S.C. § 522 and all interpretive case law in support of his objections.

WHEREFORE, the Trustee respectfully requests this Honorable Court to grant the relief more fully set forth in the Order attached hereto as **Exhibit A**, and deny the claim of exemption in its entirety.

Respectfully Submitted,

OSIPOV BIGELMAN, P.C.

Date: May 31, 2011

/s/ Jeffrey H. Bigelman

JEFFREY H. BIGELMAN (P61755)

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ORDER GRANTING
CHAPTER 7 TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS

THIS MATTER having come before the Court pursuant to Chapter 7 Trustee's Objection to Debtors' Claim of Exemptions, notice thereof having been served on Debtors' attorney and the Debtors pursuant to applicable bankruptcy rules, no objection or request for hearing having been made or filed in response thereto, and the Court being duly advised in the premises:

IT IS HEREBY ORDERED that the Debtors' amended claim of exemption in the 2010 Income Tax Refund of Angela Sword Lewis is denied in its entirety.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
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THOMAS K. LEWIS

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Debtors.

**NOTICE OF
CHAPTER 7 TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS**

Chapter 7 Trustee, Timothy J. Miller, has filed an Objection to Debtors' Claim of Exemptions.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the Motion, or if you want the Court to consider your views on the Motion, within fourteen (14) days from the date of service of the Motion, you or your attorney must:

1. File with the Court a written response or an answer, explaining your position at:¹

United States Bankruptcy Court
211 West Fort Street
Detroit, MI 48226

If you mail your response to the Court for filing, you must mail it early enough so the Court will **receive** it within the above-referenced time period.

2. Mail a copy to:

Jeffrey H. Bigelman, Esq.
OSIPIOV BIGELMAN, P.C.
20700 Civic Center Dr. Suite 310
Southfield, Michigan 48076

3. If a response or answer is timely filed and served, the clerk will schedule a hearing on the Motion and you will be served with a notice of the date, time, and location of the

¹Response or answer must comply with F.R.Civ.P.8(b)(c) and (e)

hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Respectfully Submitted,

OSIPOV BIGELMAN, P.C.

Date: May 31, 2011

/s/ Jeffrey H. Bigelman

JEFFREY H. BIGELMAN (P61755)

Attorneys for Trustee

20700 Civic Center Drive, Suite 310

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CERTIFICATE OF SERVICE

I, Jeffrey H. Bigelman, hereby certify that on May 31, 2011, I electronically filed (1) Chapter 7 Trustee's Objection to Debtors' Claim of Exemptions; (2) Proposed Order; (3) 14-day Notice; and (4) Certificate of Service with the Clerk of the Court using the ECF system and First Class Mail:

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Respectfully Submitted,

OSIPOV BIGELMAN, P.C.

Date: May 31, 2011

/s/ Jeffrey H. Bigelman
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